

FILED

JUL 18 1997

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

DAVID W. DANIEL CLERK  
U.S. DISTRICT COURT  
F. DIST. NO. CAR.

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IN RE STUCCO LITIGATION

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Civil No. 5-96-CV-287-BR(2)

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THIS DOCUMENT RELATES TO:  
ALL CASES

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**DEFENDANT U.S. GYPSUM'S SUPPLEMENTAL MEMORANDUM  
REGARDING CLASS CERTIFICATION**

Defendant U.S. Gypsum (hereinafter "USG") notes the arguments submitted by the other defendants that the prerequisites for certification of a litigation class have not been met by the plaintiffs. Without belaboring those arguments in this brief, USG would merely take this opportunity to inform the Court that settlement discussions between USG and the plaintiffs are ongoing and both sides remain hopeful that an agreement will be reached soon. Thus, it remains possible that the plaintiffs and USG may approach this Court in the future seeking certification of a settlement class.

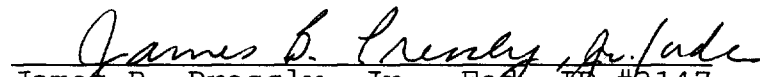
In light of Amchem Products, Inc. v. Windsor, 1997 WL 345149 at \*17 (June 25, 1997), in which the United States Supreme Court specifically determined that, "settlement is relevant to class certification," USG would suggest that this Court might wish to refrain from a determination, at this time, whether the proposed class could be certified as a settlement class. It is indeed conceivable that the prerequisites for certification of a settlement class might be met by the plaintiffs as against USG. Certainly if settlement is reached, counsel for plaintiffs and USG

will submit to the Court detailed briefing in support of settlement class certification.

Because it is possible that a settlement class against USG, and perhaps other defendants, could achieve economies of time, effort, and expense, and promote uniformity of decisions as to persons similarly situated, without sacrificing procedural fairness or bringing about undesirable results, Defendant USG respectfully requests this Court refrain from a determination whether the proposed class could be certified as a settlement class.

Respectfully submitted,

Dated: 7/17/97

  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

Civil No. 5-96-CV-287-BR(2)

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing DEFENDANT U.S. GYPSUM COMPANY'S SUPPLEMENTAL MEMORANDUM REGARDING CLASS CERTIFICATION was served in the above-referenced case by depositing a copy of said document in the United States Mail, postage prepaid, on this the 17th day of July, 1997, addressed to each of the following persons as follows:

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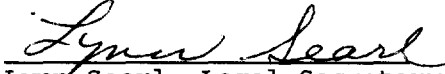
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